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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,841	02/28/2002	Lukasz K. Surazski	2705-212	2867

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EXAMINER

PENDLETON, BRIAN T

ART UNIT	PAPER NUMBER
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2644

DATE MAILED: 03/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/086,841

**Applicant(s)**

SURAZSKI ET AL.

**Examiner**

Brian T. Pendleton

**Art Unit**

2644

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 4-7, 9-11, 14, 16, 18-22 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Smits, US Patent 6,125,115. Smits discloses a teleconferencing method and apparatus with three-dimensional sound positioning in figure 3 comprising an input port to receiving incoming audio streams 342, a controller to receive user input and apply a mixing factor to the incoming audio streams to produce an output audio stream and an output port to computer 356. Figure 4 step 418 discloses that the system receives an user input and step 432 teaches that the a mixing factor is applied to the audio data. As to claim 4, step 418 discloses a user-configured input indicating the desired location for each participant of the teleconference

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which is an existing user profile. Per claim 5, spatialization components 368a, 368b accomplish data transform to make the audio streams appear to sound from different location, which is a head related transfer function. Regarding claims 6 and 7, column 7 lines 1-3 disclose that the user can select a stereo pan line between loudspeakers in an alternative embodiment. The stereo pan line inherently is a pan factor having a positional factor. Similarly, method claims 9, 10, and 14 are met. Per claim 11, the alternative embodiment in figure 5 discloses a pan factor. In addition, claim 16 is met through the audio reproduction station 314 in figure 3 which has a means for receiving audio streams 342, means for applying a mixing factor to the audio streams (368a, 368b), and means for transmitting an output audio stream from the elements 368a, 368b. Per claim 18, there is an user interface 356 (keyboard). As to claim 19, there is a controller which does the mixing. Since the apparatus is a computer, there is inherently machine readable code that executes the method for three-dimensional sound positioning. Accordingly, claims 20, 21, 22 and 25 are met.

Claims 1, 3, 8, 9, 12, 13, 15, 20, 23, 24, and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Cohen, US Patent Application Publication 2003/0112947. Cohen discloses a telecommunications and conferencing calling device comprising a plurality of users 10 connected to a telephone service provider 12 and a telephone conferencing server 22. The server 22 has an input port 24 for receiving incoming audio streams. The network interface 28 acts as a controller that receives user input (see paragraph 83). Lastly, the server 22 has a plurality of mixers for applying a mixing factor based on the control messages from the various participants of the teleconference. There is an inherent output port. Claims 1, 9, and 20 are met. Per claims 8, 12 and 23, paragraphs 127-131 disclose that user may control the mix (through GUI 600 and

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700 on the computer 16) which includes making a source having equal weighting in both the left and right channels, which reads on a mono-mixing factor. As to claims 3, 13 and 24, the user input is in real-time. Per claims 15 and 26, Cohen discloses that the input for mixing control could be a default setting which reads on receiving an automatic user input from the endpoint of the user.

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gentle, US Patent 6,816,360 in view of Connor et al, US Patent 6,011,851. Gentle discloses an audio conferencing apparatus and method in figure 6 comprising an input port, an output port, and a controller 611, 621 (shown more in detail in figure 7) for applying a mixing factor to the incoming audio streams for producing the output audio stream. The apparatus 600 functions as a conference bridge (per claims 2 and 17). However, Gentle does not disclose that the positions of the audio conferees (by the mixing factor) are selected via user input. Connor discloses a spatial audio processing method and apparatus comprising directional controller 27 for producing an user input, source direction switch 28 for routing the audio input streams 18, 20, and 22 and spatial processors 36, 38, 40. The mixing in Connor is based on the user input. Thus, it was well known to have user input for determining the location of audio sources in telephony applications.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to include the user input feature of Connor in the apparatus of Gentle for the purpose of increasing the flexibility of the system to the user's needs. Claims 1 and 16 are met. As to claims 2 and 17, Gentle discloses a conference bridge.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian T. Pendleton whose telephone number is (703) 305-9509. The examiner can normally be reached on M-F 7-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on (703) 305-4040. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Brian T. Pendleton  
Examiner  
Art Unit 2644

btv

